

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EDWARD R. WILLIAMS, ET AL., : CIVIL ACTION
 : NO. 00-1709
 Plaintiff, :
 :
 v. :
 :
PHILADELPHIA HOUSING :
AUTHORITY, :
 :
 Defendant. :

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

December 18, 2002

I. FACTUAL BACKGROUND OF THE CASE¹

Plaintiff, a former PHA police officer, brought suit against the PHA alleging unlawful retaliation, discrimination and failure to accommodate under the ADA. The plaintiff was temporarily suspended from PHA as a result of a heated altercation he had with a superior officer. Plaintiff's hiatus from PHA lasted from his suspension, on May 19, 1998, until he was fired, on December 29, 1998. During the period between plaintiff's suspension and subsequent termination, plaintiff underwent various psychological examinations. The examining psychologists concluded that plaintiff suffered from severe

¹ A full recitation of the facts is set forth in Williams v. Philadelphia Housing Authority, 2002 WL 31496398 (E.D. Pa. October 28, 2002).

depression, and that as a result, plaintiff should be prohibited from carrying a firearm for a temporary period of time.

Based on these events, PHA refused to allow plaintiff to return to work at PHA until plaintiff received medical clearance to carry a firearm once again. In turn, plaintiff requested that PHA allow him to work in a capacity where it would not be necessary to carry a weapon. PHA refused, citing safety concerns, and contending that plaintiff would have access to firearms in all available employment positions for which he was qualified at PHA.

After the altercation, plaintiff stopped coming to work. While out of work, plaintiff drew down all available medical leave to which he was entitled.² After he had exhausted all of his medical leave, plaintiff requested in writing and PHA granted a leave of absence on two occasions. After the second leave of absence expired, although directed to do so by PHA, plaintiff did not request any additional leave or otherwise contact PHA. As a result, his employment with PHA was terminated on December 29, 1998.

The court granted summary judgement in favor of PHA. In doing so, the court held, as to plaintiff's claim of

² During the period between plaintiff's suspension and his psychological examination, plaintiff was instructed to report to work in the PHA radio room. PHA refused to allow plaintiff to work in the radio room only after PHA received the results of plaintiff's psychological examination.

retaliation, that: 1) plaintiff's retaliation claim, to the extent that it was based upon PHA's refusal to transfer plaintiff to the radio room, was stated as a retaliation claim, but was, in substance, a failure to accommodate claim and 2) as to plaintiff's claim of retaliatory termination, that plaintiff failed to produce sufficient evidence from which a reasonable jury could conclude that the defendant's proffered legitimate reason for plaintiff's termination was, in actuality, a pretext for retaliatory animus.

As to plaintiff's claim of discrimination under the ADA, including a claim of failure to accommodate, the court held that: 1) plaintiff was not disabled within the meaning of the ADA; 2) plaintiff was not "regarded as" disabled by the PHA within the meaning of the ADA; and 3) plaintiff did not have a record of a disability within the meaning of the ADA.

Plaintiff has filed a motion for reconsideration.

II. PLAINTIFF'S MOTION FOR RECONSIDERATION

A motion for reconsideration should only be granted when there is newly available evidence, an intervening change in controlling law or if the court committed manifest errors of law or fact and there is a need to prevent manifest injustice. See NL Indus., Inc. v. Commercial Union Ins. Co., 65 F.3d 314, 324 n.8 (3d Cir. 1995); Harsco Corp. v. Zlotnicki 779 F.2d 906, 909

(3d Cir. 1985). Plaintiff does not allege the existence of newly discovered evidence or an intervening change in controlling law. Therefore, in order to succeed, plaintiff must establish that this court committed manifest errors of law or fact.

A) Plaintiff's Discrimination Claim

Plaintiff asserts that the court ignored alleged admissions of record by PHA that plaintiff was disabled because PHA stated in its answer to plaintiff's complaint that they offered plaintiff a "reasonable accommodation." Plaintiff contends that the decision of the Supreme Court in Barnett v. U.S. Airways, Inc., 122 S.Ct. 1516, 1523 (2002) stands "for the proposition that a federal court 'must assume' a plaintiff to be an individual with a known disability where the employer purports to have offered a reasonable accommodation." Plaintiff's Motion for Reconsideration at 15. Accordingly, plaintiff argues, that the court "disregarded governing law," resulting in factual and legal errors.

Plaintiff misinterprets the Barnett decision. The Supreme Court did not hold, as argued by plaintiff, that a court must always assume that an individual is disabled under the ADA whenever an employer uses the phrase "reasonable accommodation" in referring to voluntary concessions made to an employee. The issue before the Supreme Court in Barnett was whether, and to what extent, the ADA's requirement that disabled individuals be

given reasonable accommodations is trumped by an existing seniority system. See Barnett, 122 S.Ct. at 1520. In other words, the inquiry made by the Court was whether the accommodation requested was "reasonable." See id. The Court "assumed" disability because the parties assumed disability not because the defendant simply used the term "reasonable accommodation." See id. at 1523.

Plaintiff is correct that defendant's use of the term "reasonable accommodation" was not discussed in the opinion and probably should have been. Such use of the term "reasonable accommodation" can serve as relevant evidence that defendant regarded plaintiff as disabled. However, the use of the term, in and of itself, does not show that defendants regarded plaintiff as suffering from a disability that was any greater than was found in the court's opinion (i.e., being unable to work in a position in which he would have access to firearms or be around those carrying firearms). Merely pointing to the use of the term "reasonable accommodation" by the defendants fails to establish a manifest error of fact or law.

B) Plaintiff's Retaliation Claim

Plaintiff also objects to the court's holding that plaintiff failed to produce sufficient evidence from which a reasonable jury could conclude that the defendant's proffered legitimate reason for plaintiff's termination was, in actuality,

a pretext for retaliatory animus. Plaintiff argues that such a holding is a manifest error for the following reasons:

1) The court found that plaintiff was terminated for failing to respond to PHA's directive that plaintiff apply for additional leave in accordance with PHA policy regarding leave, however, PHA never introduced the relevant policy;

2) the court relied solely on the temporal proximity between plaintiff's protected activity and his subsequent termination, and the Third Circuit has made clear that temporal proximity, by itself, cannot be a determinative factor;

3) PHA failed to articulate a legitimate non-retaliatory reason for plaintiff's termination because compliance with the PHA personnel policy regarding medical leave called for a physical impossibility. Moreover, physical impossibility is the reason why plaintiff did not comply. This is so because pursuant to PHA policy regarding medical leave, requests for medical leaves of absence must be accompanied by a medical certificate from the employee's physician, because plaintiff's physician was of the opinion that plaintiff could return to work; and

4) the evidence shows that PHA had only required plaintiff to request additional leave or be terminated after plaintiff engaged in protected activity, insinuating that PHA did not adhere to that policy on a regular basis.

With regards to plaintiff's first argument, it is true that PHA never offered into the record the relevant provisions of PHA's policy regarding medical or any other type of leave to which it referred. However, PHA made numerous assertions that the requirement that plaintiff request an additional leave of absence after a previous leave had expired was in conformance with PHA policy. Plaintiff, however, filed five memoranda in support of his position on the cross-motions for summary judgment, yet never contradicted PHA's characterization of its personnel policy until this motion for reconsideration. In the absence of an allegation to the contrary, the court was free to accept PHA's position as uncontested.

With regards to plaintiff's second argument, the court did not rely solely on the temporal proximity between the protected activity and the adverse employment action, and explicitly stated so on pages 21-23 of the opinion. In fact, the court's finding was that plaintiff presented no evidence of retaliatory motive besides the temporal proximity of the two occurrences, and that that by itself was insufficient to support a finding of causation or pretext.

Plaintiff's third argument, which once again is being raised for the first time in the motion for reconsideration, also fails. Plaintiff had stated in depositions that he was fully aware that leaves of absence could be granted for any reason, not

just medical reasons. Moreover, plaintiff did not submit a medical certification with regards to his second leave of absence, yet one was granted. Finally, the PHA claimed to have fired plaintiff not just because he failed to request an additional medical leave of absence, but because of he failed to respond at all to PHA's directive.

With regards to plaintiff's fourth argument, it is true that PHA's medical leave policy was not consistently applied to plaintiff, but its general leave policy was. The general leave policy states that leave would be granted, "in special circumstances" by written request, see Defendant's Response, exhibit B, and defendant knew that leave was granted for any legitimate reason.

III. CONCLUSION

For the reasons set forth above, the motion for reconsideration will be denied.

An appropriate order follows.

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v.	:	
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PHILADELPHIA HOUSING	:	
AUTHORITY,	:	
	:	
Defendant.	:	

ORDER

AND NOW, on this **18th** day of **October, 2002**, it is hereby **ORDERED** that plaintiff's motion for reconsideration (doc. no. 60) is **DENIED**.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO J